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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/622,204	10/24/2000	Johan Sjöholm	104-290P	8411
2292	7590	04/19/2004	EXAMINER	
BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747			WEINSTEIN, STEVEN L	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 04/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/622,204	Applicant(s) SJOHOLM ET AL.	
	Examiner Steven L. Weinstein	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-50 is/are pending in the application.
- 4a) Of the above claim(s) 14-35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 36-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 36-41, 42, 43, 45⁴⁹ and 50 are rejected under 35 U.S. C. 103(a) as being unpatentable over Wild (WO 89/12006) in view of Mead et al (3,186,625), Ikeda et al (4,454,979), Rutter et al (4,981,374) and Wild (EP 380107), further in view of Ostendorf (Ep 524487), Spiess (3,604,491) and Toyoshima (Jp 3-289451).

In regard to claim 36, and as disclosed previously, Wild discloses a container capable of use for liquid or pulverulent contents comprising walls which are interconnected to form a closed compartment, two opposing side walls being joined along a common connecting position, a duct means (13) formed between the two side wall and extending to the out side of the container, the walls being flexible so the volume of the compartment would be dependent on the relative position of the walls and the duct means having a uniform composition of materials along its entire length. Claim 1 also recites that the duct means is sealed with a first terminal edge "when" the container is in an empty state and claim 1 also recites a "whereby" clause. For examination purposes, the container of claim 1 is being construed as empty and the duct means is unsealed. An article can only be positively recited at one time in time and space. The rest of the language is construed as functional capabilities. Also for examination purposes, the recitation that the duct means is sealed when in an empty

state is being construed as a capability of the container. That is, the duct means is capable of being sealed when the container is empty. Stated somewhat differently, it can be sealed empty or be left open when empty. Similarly for the "whereby" clause. That is, the container is capable of being sealed after filling. Note, too, the phrase that the duct means extends to the outside of the container can be interpreted that the duct means is open to the space outside the container, that it extends past the compartment or it extends past the general outline of the container. Any of these interpretations of language is reasonable. With this analysis as a background, Wild ('006) has a duct means (the spout that opens to the outside of the container), that extends beyond the general perimeter of the container and is capable of being sealed with a first terminal edge when the container is empty before filling and wherein the container would be capable of having the first terminal edge removed, filed and sealed by a new terminal edge. Support for these capabilities is derived from: the shape of the container itself in Wild ('006), as well as the fact that Mead et al discloses it was well established to provide a duct means (30) with a seal which is capable of being removed for filling the container, and then sealed by a new terminal edge; Ikeda et al further disclosing sealed duct means with a removable portion (and that the duct means is for filling and dispensing); and Rutter et al disclosing a sealed duct means on an empty container which is opened for filling and resealing. Thus, the art, taken as a whole, would fairly teach it would have been obvious to impart to the duct means of Wild ('006), the recited capabilities even if those capabilities were not inherent in Wild ('006). Wild ('107) is relied on as further evidence of bags with duct means and sealing capability.

Claim 36 now recites a wall interconnected with the two side walls forming a bottom wall in the container. Although a complete translation of Wild ('006) is not present in the file (which the examiner will attempt to obtain), Wild ('006) almost assuredly discloses a bottom wall connected to the side walls. This conclusion is based on the drawings showing the dotted lines 11 and 12 and the fact that the abstract states that the side walls are interconnected by a foldable base. In any case, Ostendorf teaches that it was well established to provide free standing pouches employing a bottom wall (6) joined to side walls as does Spiess (e.g. fig 8 and 11). To modify Wilde ('006), if necessary, and employ a wall for connection to the sidewall for its art recognized and applicant's intended function would therefore have been obvious.

Claim 36 also now recites that the duct means is centrally arranged. As evidenced by Wilde ('107), for example, fig 7 and Spiess, e.g. Fig. 10 and 11, and Toyoshima, Fig 2, it was notoriously well known to provide a container with duct means wherein the duct means is centrally arranged and wherein the container is free standing. To modify Wilde ('006) and center the duct means is seen to have been an obvious matter of choice and/or design and an obvious expedient in view of the art taken as a whole teaching such positioning.

Finally, Claim 36 also adds the recitation that the container has a carrying arranged in the connecting portion which is clearly taught by the art taken as a whole including, for example Wilde ('003) and Ostendorf. In regard to claims 37, Rutter teaches aseptic packaging and thus sterile conditions. In regard to claims 38-40, the art taken as a whole including Wild ('006), Mead et al, Ikeda et al and Rutter et al disclose

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sealable duct means of the same material as the container walls. In regard to claim 41, at the minimum, both Rutter et al and Mead et al disclose a flat sealed, empty bag and to modify Wild ('006), if indeed Wild ('006) does not already teach a flat, sealed, empty bag, would have been obvious in view of the art taken as a whole.

Claim 44 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 43 above, and further in view of Saito et al (EP 539,800).

As noted previously Wild ('006), Wild ('107) and Saito evidence the fact that it was notoriously conventional to provide boundary lines that are arched in association with duct means.

Claims 46-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 36 above, and further in view of Buchaman et al (WO 98/00286), Jensen et al (4,023,607), Aesbach et al (WO 95/3129), Spiess (3,604,491) and Toyoshima (Jp 3-289451) for the reasons given in the Office action mailed 3/5/03, paper no. 10.

All of applicant remarks filed 3/4/04 have been filed and carefully considered but are not found to be convincing. Applicants have combined a series of conventional structural expedients as well evidenced by the art taken as a whole, employed than for their well known and intended function, as also attested to by the art taken as a whole and achieved no new or unexpected result therefore.

The reminder of the references newly cited on the PTO 892 form are cited as art of interest.

Any inquiry concerning this communication from the examiner should be directed to Steven Weinstein whose telephone number is (571) 272-1410. The examiner can generally be reached on Monday-Friday 7:00am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is (571) 272-1201.

S. Weinstein/af
April 13, 2004



STEVE WEINSTEIN
PRIMARY EXAMINER 4/16/04
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